



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Citation Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the security deposit. The hearing was conducted by conference call. The landlord's representative and the tenants called into the hearing. The tenant's witness, M.D. also called into the hearing. This hearing was originally set for hearing on October 26, 2015, but it was adjourned at the request of the applicant with the consent of the tenants and rescheduled for hearing by conference call on March 15, 2016.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the tenant's security deposit?

Background and Evidence

The rental unit is a house in North Vancouver. It is a prefabricated log home. The tenancy began March 1, 2014 for an 18 month term ending August 31, 2015. The agreement provided that the tenants would move out at the end of the term. The monthly rent was \$2,500.00. The tenants paid a security deposit of \$1,250.00 on February 14, 2014. They also paid a \$250.00 "yard deposit" at the start of the tenancy.

The tenants moved out of the rental unit before the expiry of the fixed term. They moved out of the rental unit on April 30, 2015. In the application for dispute resolution filed on May 14, 2015 the landlord claimed payment of the sum of \$1,370.00 said to be for the loss of rental income in the amount of a one half month's rent, costs to find a replacement tenant in the amount of \$100.00 and the sum of \$20.00 claimed for the replacement of two lightbulbs. The landlord returned \$80.00 of the tenants' deposits totalling \$1,500.00 and it has brought this application seeking a monetary award and the authority to retain the balance of the tenants' deposits in satisfaction of that award.

The tenants testified that there were significant problems with the rental unit throughout the tenancy and in particular serious and ongoing problems with mould in the house. The tenants testified that there were a series of problems with the rental unit. The dishwasher was broken, one of the electrical heaters was broken and there was a faulty toilet. The tenants testified that the skylights in the ceiling leaked and water condensation on the skylights caused mould. The tenants said they and their children suffered health problems due to mould. Their health problems included asthma, respiratory symptoms and skin irritation. The tenants claimed that the landlord's failure to attend to and properly remedy the problems amounted to breaches of the tenancy agreement. The tenants described them as constituting a material and fundamental breach of the tenancy agreement.

The tenants gave the landlord 30 days' notice that they intended to move out of the rental unit on April 30, 2015. They testified that they assisted and cooperated with the landlord in finding new tenants for the property; they placed an advertisement and showed the property to many prospective tenants.

The tenants testified that they took proper care of the rental property and left the rental unit in good condition. They said that despite their efforts to properly heat the rental unit and maintain reasonable and comfortable temperatures inside the house, mould still grew on walls, on the skylights, on the ceiling and on the tenants' clothing and personal effects in the rental unit. The tenants testified that the moisture and condensation was so severe that moss was growing on the inside of one of the skylights. The tenants submitted numerous pictures to show what they claimed was the serious problem with mould and condensation in the rental unit.

The landlord contended that there was no inherent problem with the house. He attributed the mould problem to the tenants' activities and lifestyle and their failure to properly heat the house.

R.C., the landlord's contractor said in a written statement that in March or April, 2014 he inspected the house for mould at the request of the landlord. He said that moss was found only on the outside of the skylight and was removed by power washing. In November, 2014 he again inspected the house following a complaint by the tenants about pervasive mould in the house. He used a spray cleaner and a wipe to remove a white powdery substance. He said that the tenant observed him performing the removal and she said that she would continue to perform the cleaning to control any future appearance. After the tenants complained of condensation from the skylights, R.C. attended and covered them with transparent plastic; later on the instructions of the

landlord he boarded up and sealed two skylights in the dining room and bedroom. He said he was present in the house to show it to prospective tenants in the month before the tenants moved out. He said that he did not observe any mould in the house despite the tenants' continued complaints of mould.

The tenants disputed the evidence from the landlord's contractor. They referred to their extensive photographic evidence to show that there was a serious mould problem and they testified that the pictures clearly showed the extent of the problem, including the presence of moss on the inside of the skylight, contrary to R.C.'s testimony. The tenants said that there continued to be a problem with mould and condensation throughout the tenancy. The tenants testified that problems with mould in the rental unit amounted to material and fundamental breaches of the tenancy agreement that entitled them to end the contract and leave without notice. The tenants' position is that they are entitled to the return of their full deposit without deduction.

Analysis

The tenancy agreement was for a fixed term ending August 31, 2015 and the tenants were therefore not at liberty to end the tenancy upon one month's written notice. The *Residential Tenancy Act* does provide a mechanism for ending a fixed term tenancy before the expiry of the term in specific circumstances. Section 45(3) of the *Residential Tenancy Act* provides:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The Residential Tenancy Policy Guideline with respect to material terms comments as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach –whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and

- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Although the tenants provided convincing evidence that there was a significant mould problem in the rental unit that could reasonably be regarded as constituting a material breach of the tenancy agreement, I find that the tenants failed to comply with the provisions of section 45(3) of the *Act*. The tenants did not, as required by the *Act*, give the landlord formal written notice of the alleged failure to comply with a material term of the tenancy agreement and they did not give the landlord a reasonable period within which to correct the situation before they elected to end the tenancy. The tenants made verbal complaints about mould and the landlord did take steps to address their concerns, in particular by dispatching his contractor to inspect and perform remedial work to the skylights.

The tenants did not state their position that they considered the landlord to be in material breach of the tenancy agreement until after the tenancy ended on April 30, 2015 and I find that the tenants were not entitled to end the tenancy on the grounds that the landlord failed to comply with a material term of the tenancy because they did not give the landlord the required written notice with time to comply before ending the tenancy. The tenants assisted landlord in his efforts to re-rent the house. I find that the landlord did take reasonable steps to mitigate his losses by securing a new tenant to occupy the rental unit effective May 15th.

I find that the landlord is entitled to recover its loss of rental income for May in the amount of \$1,250.00. The landlord has not identified any contractual provision that would entitle it to claim a fee or charge for showing the house and I deny the claim for \$100.00 said to be for the cost to show the house. The landlord claimed \$20.00 for lightbulbs. He did not provide any invoices to support this claim and it too is denied. The landlord is entitled to recover the \$50.00 filing fee for its application for a total award of \$1,300.00. I order that the landlord retain the said sum from the deposits that it holds and I grant the tenants a monetary award in the amount of \$120.00, being the balance of the \$1,420.00 deposit held by the landlord. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord's application has been allowed in the amount of \$1,300.00. The tenants have been awarded the balance of the deposits in the amount of \$120.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 14, 2016

Residential Tenancy Branch